IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 394 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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COMMISSIONER OF INCOME-TAX

Versus

NATVARLAL V. DESAI

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Appearance:

1. INCOME TAX REFERENCE No. 394 of 1992

MR TANVISH U BHATT for Petitioner No. 1

SERVED BY RPAD - (N) for Respondent No. 1

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CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE K.A.PUJ

Date of decision: 17/07/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE K.A.PUJ)

At the instance of the revenue, the following questions of law are referred for the opinion of this Court:-

(i) Whether in law and on facts the Appellate Tribunal was right in holding that only 25% of the share income from M/s. N. Desai Co. was assessable in the hands of the assessee?

(ii) Whether in law and on facts 25% of the share income of M/s. N Desai & Co. was rightly diverted by the assessee in favour of his wife and hence only 25% share income of the assessee from the partnership firm was assessable in the assessment of the assessee?

2. Heard Mr Tanvish U Bhatt, learned counsel for the applicant- revenue. Nobody appears on behalf of the respondent- assessee though notice was duly served.

3. The assessment year involved is assessment year 1977-78. While drawing the statement of case, the Tribunal has referred to its earlier order for assessment year 1981-82 wherein this court has directed the Tribunal to draw a statement of case and to refer the question as suggested therein. The said reference has been decided by this Court on 5-7-2002 and this Court has taken the view that the Appellate Tribunal was right in holding that only 25% of the share income from M/s. N. Desai & Co. was assessable in the hands of the assessee. This Court has further taken the view that the assessee has rightly diverted 25% of the share income from M/s. N. Desai & Co. in favour of his wife and hence only 25% of the share income of the assessee from the partnership firm was assessable in the hands of the assessee.

Following the aforesaid judgment delivered by this Court on 5-7-2002, we answer both the questions in the affirmative i.e. in favour of the assessee and against the revenue.

4. The Reference is accordingly disposed of with no order as to costs.

(M.S. Shah,J) (K.A. Puj,J)

zgs/-